

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
EASTERN DIVISION

BETTY JEAN RAPER  
Plaintiff

V.

NO. 1:96CV383-B-D

NORTHEAST MISSISSIPPI DAILY JOURNAL  
Defendant

**MEMORANDUM OPINION**

This cause comes before the court upon the defendant's motion for summary judgment. Upon due consideration of the parties' memoranda and exhibits, the court is ready to rule.

**FACTS**

The plaintiff was employed by the defendant in its telemarketing department, selling newspaper subscriptions by telephone. She worked from 5:30 p.m. to 8:30 p.m. on Monday through Thursday and from 9:00 a.m. to 12:00 noon on Saturday. During the course of her employment, the plaintiff, who is a devout Christian, requested that the defendant alter her work schedule so that she could attend church on Wednesday nights. The defendant accommodated the plaintiff's request. However, approximately thirteen months prior to her termination, the defendant informed the plaintiff that she was to return to her original work schedule, which required the plaintiff to work on Wednesday nights. There is no evidence that the plaintiff refused to comply with this request.

The plaintiff was terminated from her employment on or about April 2, 1996. The defendant asserts that the plaintiff was discharged for insubordination towards her supervisor, after having been warned on more than one occasion. The plaintiff asserts that her termination

was an act of religious discrimination in violation of Title VII of the Civil Rights Act of 1964, and further asserts a cause of action for intentional infliction of emotional distress.

## **LAW**

On a motion for summary judgment, the movant has the initial burden of showing the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 325, 91 L. Ed. 2d 265, 275 (1986) ("the burden on the moving party may be discharged by 'showing'...that there is an absence of evidence to support the non-moving party's case"). Under Rule 56(e) of the Federal Rules of Civil Procedure, the burden shifts to the non-movant to "go beyond the pleadings and by...affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" Celotex Corp., 477 U.S. at 324, 91 L. Ed. 2d at 274. That burden is not discharged by "mere allegations or denials." Fed. R. Civ. P. 56(e). All legitimate factual inferences must be made in favor of the non-movant. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 91 L. Ed. 2d 202, 216 (1986). Rule 56(c) mandates the entry of summary judgment "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp., 477 U.S. at 322, 91 L. Ed. 2d at 273. Before finding that no genuine issue for trial exists, the court must first be satisfied that no reasonable trier of fact could find for the non-movant. Matsushita Elec. Indus. v. Zenith Radio Corp., 475 U.S. 574, 587, 89 L. Ed. 2d 538, 552 (1986).

### **A. Religious Discrimination**

To establish a claim of religious discrimination under Title VII, the plaintiff must show:

(1) that she has a sincere religious belief which conflicts with an employment requirement;

(2) that she has informed the employer of the conflict; and

(3) that she has been discharged or disciplined for failing to comply with the conflicting requirement.

Turpen v. Missouri-Kansas-Texas R.R. Co., 736 F.2d 1022, 1026 (5th Cir. 1984); Favero v. Huntsville Indep. Sch. Dist., 939 F. Supp. 1281, 1286 (S.D. Tex. 1996), aff'd, 110 F.3d 793 (5th Cir. 1997). The plaintiff asserts that she is sincerely religious, that the defendant knew that she wanted to attend church on Wednesday nights, and that the defendant revised her schedule so that she had to return to working Wednesday nights. Unfortunately for the plaintiff, this is not sufficient to establish a prima facie case of religious discrimination. Under the fact scenario presented by the plaintiff, being scheduled to work on Wednesday nights was the employment requirement that conflicted with her sincere religious belief. To present a prima facie case, the plaintiff must show that she failed to attend work on Wednesday nights, and that she was terminated (or otherwise disciplined) for her absence. The plaintiff does not assert that she refused to work on Wednesday nights, only that she did not want to work on Wednesday nights. The plaintiff has further presented no evidence that her termination was the result of any other failure to comply with a conflicting employment requirement. Therefore, the court finds that the defendant is entitled to summary judgment as to the plaintiff's claim for religious discrimination.

### **B. Intentional Infliction of Emotional Distress**

An action for the intentional infliction of emotional distress arises where there is something about the defendant's conduct which evokes outrage or revulsion. Sears Roebuck & Co. v. Deavers, 405 So. 2d 898, 902 (Miss. 1981). Even conduct that rises to the level of nerve-racking, upsetting, and improper is not enough to reach the level of extreme and outrageous conduct required for recovery for the intentional infliction of emotional distress. Jenkins v. City of Grenada, 813 F. Supp. 443, 447 (N.D. Miss. 1993). The plaintiff has produced no evidence of any conduct by the defendants which could be deemed to be so outrageous as to support an award

for the intentional infliction of emotional distress. Therefore, the court finds that the defendant is entitled to summary judgment as to the plaintiff's claim for intentional infliction of emotional distress.

### **CONCLUSION**

For the foregoing reasons, the court finds that the defendant's motion for summary judgment should be granted. An order will issue accordingly.

THIS, the \_\_\_\_ day of March, 1998.

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NEAL B. BIGGERS, JR.  
UNITED STATES DISTRICT JUDGE